

REMARKS/ARGUMENTS

Claims 2-25 are pending in the present application.

This Amendment is in response to the Office Action mailed April 29, 2009. In the Office Action, the Examiner rejected claims 2-25 under 35 U.S.C. §103(a). Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 2, 5, 10-11, 14, 20-21, and 24-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,504,744 issued to Adams et al. ("Adams") in view of U.S. Patent No. 5,504,744 issued to Aimoto et al. ("Aimoto"); claims 3-4, 12-13 and 22 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of Aimoto and U.S. Patent No. 5,373,841 issued to Goh et al. ("Goh"); claims 6-9 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of Aimoto and U.S. Patent No. 5,790,554 issued to Pitcher et al. ("Pitcher"); claims 18-19 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of Aimoto, Pitcher, and Goh; and claim 23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,563,874 issued to Kant ("Kant") in view of Aimoto. Applicant has added to claim 26. Applicant respectfully submits that newly-added claim does not include any substantive new matter. Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

I. ADDRESSING INFORMALITIES

Before presenting arguments directed to the grounds for rejection, Applicant respectfully submit that the Office Action does not explicitly identify which references are relied upon by the USPTO in rejecting claims 15-17. Upon review of the entire Office Action, it appears that these claims were rejected using the same references identified by the §103(a) rejection of claims 6-9. This response is based on this perceived rejection. Second, Applicant notes that the Office Action cited the reference "Goh," but it appears to be a typographical error and is referring to Goh (U.S. Patent No. 5,373,841). Applicant is further making this presumption in its traversal of the outstanding Office Action.

II. ADDRESSING SUBSTANTIVE NATURE OF THE REJECTION

As the Examiner is aware, to establish a *prima facie* case of obviousness, certain basic criteria must be met. For instance, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143*. Applicant respectfully submits that the combined teachings do not address each and every limitation, and thus no *prima facie* case of obviousness has been established.

Furthermore, the Supreme Court in Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966), stated: “Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.” *See MPEP §2141*. In KSR International Co. vs. Teleflex, Inc., 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that “[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to *determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.*” *Emphasis Added*. The Court further required that an explicit analysis for this reason must be made. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 127 S.Ct. at 1741, quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006).

In the instant case, besides the teachings of the combined references failing to address each and every limitation set forth in the claims, Applicant further submits that there are significant differences between the cited references and the claimed invention and there is no apparent reason to combine the known elements in the manner as claimed. As a result, no *prima facie* case of obviousness has been established.

As previously stated, Adams merely discloses a dynamic bandwidth controller 30 including a cell monitor 31 (*See FIG. 3 and 6:31-32 of Adams*) and a broadband switch 21 receiving cells from customer A at input port 22. *See FIG. 2 and 4:62-65 of Adams*. The Examiner alleges that the cell monitor 31 “monitors the bandwidth consumption by one or more types of packet traffic received in the packet forwarding device,” as recited in independent claims 5, 6, and 8. Applicant respectfully disagrees.

Previously, the Examiner alleged that the broadband switch 21 corresponded to the “packet forwarding device,” and thus, the cell monitor 31 could not monitor the bandwidth consumption by packet traffic received in the packet forwarding device because the cell monitor 31 received the transmitted cells from customer A before the broadband switch 21. *See FIGs. 2-4 and 10:40-52 of Adams*. In this Office Action, the Examiner has failed to address this issue, but rather, does not identify the “packet forwarding device.” The “forwarding device” is cited as being taught on col. 10, lines 29-62 of Adams, which discusses various components of the cell monitor 31 itself.

Hence, Applicant believes that this limitation has not been established. Furthermore, delineation of each of the cited elements set forth in independent claims 5, 6, 8, 10, 20 and 23 is respectfully requested for use if an Appeal is warranted.

Moreover, as described in Adams, the buffers 41, 42, 43, and 44 are merely designed to buffers cells that are to be transmitted a different rates. Based on the actual level of bandwidth available, the processor 32 sets the transmission rate and thus, the buffer to be used. There is no teaching or suggestion that the cells in buffer 41 being transmitted at 1Mbits/s is set at a lower priority with respect to the cells in buffer 42 being transmitted at 2Mbits/s. Instead, the processor 32 merely determines which buffer to send the cells based on the available bandwidth. Apparently, the Examiner agrees that Adams fails to disclose an agent or operation for “automatically changing assignment of at least one type of packet traffic of the one or more packet traffic from a queue having a first priority to a queue having a second priority *if the bandwidth consumption computed based on an evaluation of traffic statistics substantially in real-time exceeds the threshold*” as delineated in independent claims 5, 6, 8, 10, 20, and 23. However, contends that the CBR and lower priority VBR buffers of Aimoto provide such teachings. We disagree.

Aimoto describes output buffers for two traffic classes; namely CBR and VBR. *See* 2:55 of Aimoto. The output priority of the CBR buffer is set higher than that of the VBR buffer. *See* 2:61-62 of Aimoto. Where the CBR buffer is full, the cell is transferred to the VBT buffer having an empty address. *See* 2:65-66 of Aimoto. Hence, the switching is conducted based on whether the buffer is full, and such switching is not based on whether the bandwidth consumption computed based on an evaluation of traffic statistics substantially in real-time exceeds the threshold [for bandwidth consumption].

The combination of Adams and Aimoto does not disclose or render obvious elements of independent claims 5, 6, 8, 10, 20, and 23. A review of Goh, and Pitcher also reveal that these cited prior arts fails to cure the deficiencies of Adams/Aimoto. Accordingly, the outstanding rejections of independent claims 5, 6, 8, 10, 20, and 23 are improper. Withdrawal of these rejections is respectfully requested.

Moreover, it is noted that, according to one embodiment of the invention and as recited in the specification, “statistics” can be defined as the number of packets destined for particular egress ports, the number of packets destined for particular MAC addresses, the number of packets destined for particular VLANs, the number of packets having a particular IP protocol, the number of errors associated with these different classes of traffic, the number of packets from each class of traffic that are dropped, etc. This specificity has been recited in newly added claim 26. Please note that the specification, for example, page 15, line 22 to page 16, line 2 provides support for language in newly added claim 26.

Applicant further submits that a *prima facie* case of obviousness has not been established for dependent claims 2-4, 7, 9, 11-19, 21-22 and 24-25. However, based on the dependency of these claims on independent claims 5-6, 8, 10, 20 and 23, which are believed to be in condition for allowance, Applicant respectfully submits that claims 2-4, 7, 9, 11-19, 21-22 and 24-25 are believed to be allowable for at least the reasons set forth above.

Therefore, Applicant believes that independent claims 5, 6, 8, 10, 20, and 23 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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